

In the Matter of Merchant Mariner's Document No. Z-387845-D2 and all other Seaman Documents

Issued to: Jacob Fuller

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1251

Jacob Fuller

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 28 June 1960 an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an ordinary seaman on the United States SS WHITTIER VICTORY under authority of the document above described, on or about 14 January 1958, Appellant assaulted and battered crew member Luis A. Melara with a knife; on or about 15 January 1958, Appellant failed to join his vessel upon her departure from Cadiz, Spain.

At the hearing, Appellant was represented by counsel. Appellant was not present. Pleas of not guilty were entered on his behalf to the charge and each specification.

The Investigating Officer introduced in evidence the depositions of Luis A. Melara and James E Marvin, a crew member who witnessed the alleged assault and battery.

No evidence was submitted in defense after unsuccessful attempts to obtain depositions from natives of Cadiz.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of twelve months plus twelve months on eighteen months, probation.

On 14 and 15 January 1958, Appellant was serving as an ordinary seaman on the United States SS WHITTIER VICTORY and acting under authority of his document while the ship was in the port of Cadiz, Spain.

While ashore in a barroom on 14 January, Appellant started an argument with ordinary seaman Luis A. Malara for speaking Spanish to some customers. Appellant belligerently used foul language and questioned whether Malara was a United States citizen. Malara put his hand to his pocket and took out his merchant mariner's document to prove that he was a citizen of the United

States. As he did so, Appellant struck Melara on the left cheek with the blade of a pocketknife, inflicting a cut about two and one-half inches long and one-half inch deep. The wound bled profusely and required thirteen stitches. Melara did not leave with the ship because he was hospitalized for nine days.

Appellant was injured by the local police while being arrested as a result of this incident. Appellant was hospitalized and held in custody by the police until after the ship departed from Cadiz, Spain, on or about 15 January.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the result would have been difficult if the Examiner had not refused to receive in evidence statements of three witnesses which show that Malara was cut in a scuffle for his own weapon and that Appellant was then brutally beaten by the police although innocent.

APPEARANCE: Jacob Rassner, Esquire, of New York City, of counsel.

OPINION

Melara's version as to how his face was cut is set forth above in the findings of fact. This is corroborated by the deposition of crew member Marvin.

The three statements mentioned on appeal contain identical wording; they are not sworn statements; and the so-called signatures of the witnesses are names typed by hand. At most, these are statements which had been prepared by someone else and signed at the bottom by three different persons. Hence, they have no evidentiary value as opposed to the two depositions introduced in evidence.

It seems clear that Melara did not have any weapon in his possession but was holding his document in one hand when he was cut. This was an unjustified assault and battery without provocation.

The lesser offense of failure to join was properly found proved because Appellant missed the ship as a result of his own misconduct.

The order of suspension was lenient under the circumstances.

ORDER

The order of the Examiner dated at New York, New York on 28 June 1960, is AFFIRMED.

J A Hirshfield

Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 27th day of June 1961.